IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2136 OF 2001

M.N. Mishra,
Ramsukarwadi Babubhai Patel
Chawl, Room No.5, M.G.
Road, Near National Park,
Borivli (East),
Mumbai-400 066. .... Petitioner

- Versus -

1. Siemens Limited,
Plot 2, Sector,
Kharghar Node,
Navi Mumbai-410 208.

2. The Manager - Personnel,
Siemens Limited,
Plot 2, Sector,
Kharghar Node,
Navi Mumbai-410 208.

3. The Honourable Member,
Industrial Court,
New Administrative
Building, Government
Colony, Bandra (East),
Mumbai-400 057. .... Respondents

Ms Hutoxi Tavadia for the Petitioner.

Sarvasri P.K. Rele with R.P. Rele i/b
Piyush Shah for the Respondent Nos.1
and 2.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 07, 2004

JUDGMENT:

1. Heard the learned Advocates for the parties.

Perused the records.

2. The petitioner-workman challenges the judgment and order dated 27-6-2001 passed by the Industrial Court dismissing Complaint (ULP) No.349 of 1992 which was filed by the petitioner alleging that the respondent-company was indulging in unfair labour practice under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 hereinafter called as "the said Act".

3. The grievance of the petitioner was that inspite of having been employed as Asst. Stores Keeper/Commercial Workman since April, 1980 by the respondent-company and having completed 240 days of work between 30-4-1980 to 30-4-1991 and even thereafter, the respondent-company by giving artificial breaks has deprived the petitioner from being given the status of a permanent workman which he is otherwise entitled to in terms of Clause 4(b) of the Model Standing Orders applicable to the parties. The contention of the respondent-company, on the other hand, is that the petitioner was engaged for a fixed period and on temporary basis in relation to execution of projects relating to installation and erection of industrial/electrical equipments and that, therefore, even if the petitioner has completed 240 days of service in a year, he is not entitled to claim the benefits of

permanency under Clause 4 (b) of the Model Standing Orders.

4. The respondent-company is engaged in manufacturing of electrical equipments and it undertakes the work of erection/electrical equipments or projects at sites of its clients and for that purpose engages the services of workmen for the period of execution of such contract and the installation or erection of equipments. The petitioner was first appointed as store-keeper at the project site by a letter dated 30-4-1980 for the period of three months which was extended by another three months by another letter dated 30-7-1980. He, however, continued to work till 16-11-1980 at BMC-Pise, Panjarapur (Maharashtra) site where the respondent-company had undertaken the project job. He was again given appointment for 17 months and 14 days from 4-3-1981 till 14-8-1982. During this time he was employed at NTPC, Shaktinagar in U.P. He was further engaged for 21 days from 11-9-1982 to 1-10-1982 at Century Enka, Pune. Again from 4-10-1982 to 30-9-1983 he was engaged for 362 days at HPCL, Vizag, A.P. Thereafter he was engaged from 28-10-1983 till 5-6-1986 at PPL, Paradeep, Orissa for a total number of 950 days. Then from 12-7-1986 till 5-5-1987 at SVCL, Dondapadu, A.P. for 298 days. Further from 31-8-1987 till 24-12-1988 he was employed at Uptron-CPT, Sahidabad for

482 days. Further he was employed from 9-1-1989 to 21-9-1989 at KSF, Mahad for 256 days. Lastly, before filing of the complaint he was employed from 22-10-1989 till 24-12-1991 at NEA, Nepal for 1050 days. Even after filing of the complaint, the petitioner was employed from 25-9-1992 to 9-3-1993 at NSC, Morak, Rajasthan for 66 days. Then from 2-8-1994 till 31-1-1996 at NTPC, Korba, M.P. for 336 days.

5. Every time the petitioner was appointed, he was issued with an appointment letter incorporated therein that his services were required for execution of erection job at the specified place on purely temporary basis for a fixed and specified period and further that at the expiry of the said period his appointment would automatically stand terminated without any notice, unless the period of appointment was extended in writing. During the period of service either party was at liberty to terminate the appointment without any notice and/or assigning any cause or any compensation in lieu thereof. However, the company used to reserve its right to extend the period of the temporary appointment at its sole discretion, if necessary. The appointment letter further required the petitioner to work at a place or places notified to him from time to time by the Company at the specified project site. The appointment was also made subject to Rules applicable to temporary

employees. Whenever required the period used to be extended by issuing extension letter in that regard.

6. The contention of the petitioner is that having completed 240 days of work between 30-4-1980 to 30-4-1991, he was required to be granted permanency in service with effect from 1-5-1981 in view of Clause 4(b) of the Model Standing Orders and, therefore, he is deemed to be a permanent workman of the respondent-company with effect from 1-3-1981 and is therefore, entitled for all the necessary benefits of a permanent workman, and having denied the same, the respondent-company is engaged in committing unfair labour practices under items 6 and 9 of Schedule IV of the said Act. It is his further contention that even assuming that he is a temporary workman, he was entitled to be paid wages equal to those of the permanent workmen on the principle of equal pay for equal work. He was illegally terminated by letter dated 1-5-1987 with a view to punish and victimise him even though work being available and it being forming part of the regular activities of the respondent-company.

7. It is, however, the case of the respondents that the appointment being of temporary nature in relation to the project work, the Clause 4(b) of the Model Standing Orders is not attracted and the work being not of a

perennial nature but contractual and the employment being related to project-wise, there can be no case for claim of permanency and hence no fault can be found with the impugned order. It is their further case that the respondent-company undertakes the work of erection of industrial/electrical equipments or projects at sites of its clients within stipulated time and for that purpose it is required to engage the services of some workmen only for the period of execution of such contract and installation or erection, and that therefore it engages such workmen on temporary basis. The appointment letters issued to the petitioner were in relation to appointments on purely temporary basis and such workman are supposed to work only at the respective project site during and till the completion of the project. On completion of the project work, the workman's services stand terminated without notice as per the terms and conditions of the letter of appointment. In the circumstances, the service conditions in the Model Standing Orders cannot be applied to such workman. In case any project work could not be completed within the stipulated time as mentioned in the appointment letter/s, the respondent-company extends the period of appointment of the workman so engaged at the project site. It is further contended by the respondents that the case of the petitioner cannot be compared with that of the permanent employees who are employed in the

office or in the factory or even at the project sites, and that there is always qualitative difference in performance of the work and nature of the work done by the temporary workman and the permanent workman and therefore considering all the facts, the doctrine of equal pay for equal work cannot be applied in the case of the petitioner.

8. Upon hearing the learned Advocates for the petitioner and the respondents and on perusal of the records, the point which arises for consideration is whether the workman engaged temporarily in relation to the project undertaken by the respondent-company could claim permanency by virtue of the provision under Clause 4(b) of the Model Standing Orders on completion of 240 days at such project work, or at least claim wages on par with the permanent employees.

9. It is an undisputed fact that the respondent-company is engaged in the manufacture of electrical equipment and undertakes work of installation/commissioning and erection of industrial/electronics industrial equipments for number of clients at various sites as per the requirement of the customers. It is also not in dispute that the respondent-company in its capacity of a contractor for such continuous work engages the services of various workmen for the period of execution of such

contract work of installation. It is also undisputed fact that the appointment letters issued to the petitioner disclose appointment on temporary basis with relation to each of the contract and his services were put to an end at or on completion of each of such projects for which his services were engaged by the respondent-company. It is also not in dispute that whenever, the project could not be completed within the stipulated time, the employment of the petitioner was extended by specific order in that regard and on completion of the project, the services were terminated and this process continued since 1980 till 1991 and even after the filing of the complaint. The appointment letter issued to the petitioner for every project clearly discloses the period of employment to be specific and being related to and for the purpose of the project. Such projects were not at one place or even in one State but all over the country and even beyond the territory of India and the last such contract was in Nepal. It is not the case of the petitioner that such projects were continuously going on and undertaken without any interruption. Obviously the same depends upon the need and demand for the same by the customers. In other words, it is not a permanent business and depends upon various circumstances and factors. There is also no functional integrality between various projects undertaken by the respondent during the period

from 1980 to 1991, nor there is any material in that regard on record. Taking into consideration all the evidence on record and analysis thereof in proper perspective by the Industrial Court, it has arrived at the finding that since the petitioner was appointed at various sites for fixed terms by giving him appointment letters and extension letters, he cannot claim status of permanency only because he had completed 240 days of continuous service. The petitioner having also failed to establish that there is no qualitative difference in the performance of the functions by the permanent workers and the temporary workers like the petitioner, the claim for parity of wages is also not sustainable, as rightly held by the Court below. The view I am taking in the matter clearly finds support from the decisions hereafter referred to.

10. In the matter of **Hindustan Steel Works Construction Ltd. and others v. Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and another,** reported in (1995) 3 SCC 474, it was a case wherein the company, wholly owned and controlled by the Government of India, was engaged in the construction of industrial and engineering plants both within the country and abroad and amongst other work it had undertaken the construction of steel plant at Bokaro in the State of Bihar, the construction of a super-alloy project and a

nuclear fuel complex at Hyderabad. It had also undertaken some site works at Vishakapatnam. For its Hyderabad projects, it had engaged about 230 workmen and their work was completed by January, 1980, except for some minor works. Apprehending retrenchment on completion of the work at Hyderabad, the Union of the workmen proposed for transfer of the 230 workers from Hyderabad to Vizag. On the management side, it was contended that to the extent of requirement that will arise immediately at Vizag in transferable categories, the transfer from Hyderabad will be done, and in non-transferable categories, they would be retrenched at Hyderabad and re-employed at Vizag if requirement arises thereafter. Accordingly, 130 workers were transferred to Vishakapatnam. The remaining 100 could not be absorbed at other place. On 28-3-1981 the management issued notice of retrenchment stating that the work undertaken at Hyderabad had come to an end, in accordance with Section 25F of the Industrial Disputes Act and on one month’s pay in lieu of notice. Writ Petition came to be filed in the High Court of Andhra Pradesh challenging the retrenchment which was dismissed in view of alternative remedy of reference being available under the statute and by notification dated 27-4-1982 the Government of Andhra Pradesh referred the dispute for adjudication and the Tribunal after considering the evidence, recorded the findings that the

management was a single undertaking and the several units of the undertaking really constituted parts of the same undertaking, that the retrenchment of the workmen, even before the completion of works at Hyderabad was unlawful and they should have been absorbed in other units, and that juniors to the retrenched workers were continued and there was violation of Section 25-G. With the above findings, the Tribunal directed reinstatement of 100 workers with full back wages and continuity of service and other consequential benefits. The matter was carried to the High Court of Andhra Pradesh which was allowed by the learned single Judge holding that the fact that some of the workers were transferred from Bokaro to Hyderabad or from Hyderabad to Vishakapatnam did not militate against the Hyderabad unit being a separate unit and that the management's right to transfer the employee was distinct from the right of the worker to claim transfer or absorption in another unit. However, exception was made in relation to three employees out of the 100 workers who were transferred from Bokaro on a different footing while retaining 97 who were recruited at Hyderabad and accordingly the award was quashed to the extent of 97 workmen excluding three workers. Two appeals came to be preferred - one as far as it upheld the award in respect of the three workers and the other as far as it set aside the award in relation to the 97 workmen, before the Division Bench

of the Andhra Pradesh High Court. The Division Bench held that there was no closure of the company's establishment and therefore the management could not successfully assail the validity of the reference on the ground that it did not raise industrial dispute. It was observed that the word "closure" was nowhere used denoting thereby that the establishment at Hyderabad was closed, and in the case of the respondents it was incumbent on the part of the company to absorb the workmen who were sought to be retrenched. It was also held that there was functional integrality between the Vizag unit and the units at Hyderabad and the service conditions of the workmen in all the units were uniform and there was unity of employment, control, administration and ownership and so there was functional integrality, which made the company a single undertaking. Accordingly, the Division Bench set aside the judgment of the learned single Judge and restored the award passed by the Industrial Tribunal in appeal. The matter was thereupon carried before the Apex Court wherein two questions came to be considered. Firstly, whether the work at Hyderabad had come to an end? and secondly whether the units at Hyderabad were independent establishments or were they parts of the larger establishment of the company? As regards the first question, the Apex Court held that the work at Hyderabad had indeed had come to an end and merely because some

minor work had remained, it could not be said that the project work had not come to an end. As regards the second question, after going through the entire record, it was held that:-

> "**It would thus appear that each of the works or construction projects undertaken by the appellant represent distinct establishments and did not constitute units of a single establishment.** ..... In our opinion, however, the fact that the Management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the appellant constituted one single establishment. In the case of a construction company like the appellant which undertakes construction works wherever awarded, does that work and winds up its establishment there and particularly where a number of local persons have to be and are appointed for the purpose of a particular work, **mere unity of ownership, management and control are not of much significance.** Having regard to the facts and

> circumstances of this case and the material on record, the conclusion is inevitable that the units at Hyderabad were distinct establishments. **Once this is so, workmen of the said unit had no right to demand absorption in other units on the Hyderabad units completing their job."**
>
> (emphasis supplied)

11. In **Punjabrao Krishi Vidyapeeth, Akola v. General Secy., Krishi Vidyapeeth Kamgar Union & Ors.,** reported in 1994 I CLR 913, it was observed by the learned single Judge of this Court that though a continued practice of continuing the employee for years together as a badli employee or a temporary employee may definitely raise a finger of suspicion regarding the intention of that employer, however, it is not sufficient to hold such employer guilty of such unfair labour practice as described in entry 6, as it would require something more in the form of a "tangible evidence" to show that it was deliberately done. It was specifically held that "it does not merely indicate the result of the action of the employer. If the result of the action of the employer is of depriving employees of the status and privileges of permanent employees, that by itself does not bring

the act within the ambit of entry 6. There has to be a definite object of that action, which has to be proved by evidence."

12. In **Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors.,** reported in 1992 (II) L.L.J. 452, the Apex Court, while dealing with the claim for absorption as regular employees by those who were employed on daily wages under various schemes formulated with the object of generating additional employment in the rural areas particularly for the landless workers and to those in backward areas, it was held that "The schemes under which employment was provided have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and therefore without any income whatsoever. The schemes were meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end." It was further observed that the Courts have to take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days may lead to. The Apex Court also took the judicial notice of the fact that it had become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchange and to

employ or get employed directly those who are either not registered with Employment Exchange or who though registered are lower in the long awaiting list in the Employment Register, and that such employment is sought and given directly for various illegal considerations, including money. It was held that "The employment is given first for temporary periods with technical breaks to circumvent the relevant rules and is continued for 240 or more days with a view to give the benefit of regularisation, knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years."

13. In **Union of India v. Uma Maheshwari and Others,** reported in 2000-III L.L.J. (Supp.) 353, dealing with an appeal by the regional Director, Staff Selection Commission challenged an order of the CAT directing the reinstatement and absorption of the daily wagers, the Apex Court observed that in the absence of any scheme of regularisation and in the absence of any regular work being available for the posts to which the employees were claiming regularisation, the direction issued by the CAT was not justified. That was a case wherein it was the contention of the employer that whenever there

is additional or extra work which is more than what the regular employees can handle, the employer was engaging daily rated casual workers for handling the extra work. The work involved was of opening the envelopes containing the applications, numbering them, processing them and so on. According to the employer, the said additional work was not perennial in nature and, therefore, the question of engaging those casual workers on regular basis did not arise. Considering that the employees were engaged on contract basis, it was held that in the absence of any scheme of regularisation and in the absence of any regular work being available for the posts of which the respondents claim regularisation, the Tribunal could not have granted any order directing regularisation of the services of the respondents.

14. In **State of Rajasthan & Others v. Rameshwar Lal Gahlot,** reported in 1996 (I) L.L.J. 888, it was a case wherein a person was appointed for a period of three months or till regularly selected candidate assumes office. He was appointed in January, 1988. While the learned single Judge of the Rajasthan High Court ordered his termination to be in violation of Section 25F of the Industrial Dispute Act, 1947 on account of he having completed 240 days directed fresh appointment, the Division Bench directed reinstatement with back wages. The Apex Court disapproving the decision of the High

Court held that:

> "When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately neither the learned single Judge nor the Division Bench recorded any finding in this behalf."

While delivering the above ruling, the Apex Court reiterated its earlier decision in **M. Venugopal v. Divisional Manager LIC,** reported in 1994-I L.L.J. 597, wherein it was clearly held that once an appointment is for a fixed period, Section 25-F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It was held that:-

> "When the appointment is for a fixed period unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power."

15. In **Resident Engineer, Rajasthan State Bridge & Construction Corpn. Ltd., Bikaner v. Om Prakash & Another,** reported in 1999 (I) L.L.J. 1225 it was held by the learned single Judge of the Rajasthan High Court that:-

> "It is well-settled that if the work is not of a perennial nature and the project is likely to be finished after some time then it cannot be held that giving tenure postings amounts to unfair

> labour practice and does not fall within the ambit of provisions of Section 2(oo)(bb) of the Act."

The Court was dealing with a case wherein the workman was appointed on daily wages in February, 1986. However, after sometime, as the Project undertaken by the petitioner GV company was likely not to last for a very long period, the workman was given fixed-time appointment as Chowkidar from March 1, 1987 to March 31, 1987. He was further appointed on April 1, 1987 for a period of one month and another appointment letter was issued on May 1, 1987 extending the term of appointment upto July 31, 1987 and the last appointment order was passed on August 1, 1987, by which he was appointed for a period of three months and according to the petitioner, his services came to an end automatically on October 31, 1987 by efflux of time in terms of the contract of service. However, the workman contended that making such appointment amounted to unfair labour practice under the provision of Section 25-T of the Industrial Disputes Act, 1947 and his services were terminated to deprive him from the benefits of the provisions. Considering the fact that the appointment letters were issued for a fixed tenure relating to the work on project and it had come to an end, it was held that there was no case of unfair practice being adopted

by the employer. As regards the applicability of the provisions of Section 2(oo)(bb) of the Act is concerned, it was observed that the law has been well-settled that if the work is not of a perennial nature and the Project is likely to be finished after sometime then it cannot be held that giving tenure postings amounts to unfair labour practice and it does not fall within the ambit of the statutory provisions i.e., Section 2(oo)(bb) of the Act.

16. In **Indian Railway Construction Co.Ltd. & another v. Lal Mohammad & others,** reported in 1998 (II) L.L.J. 214, it was held by the Division Bench of the Allahabad High Court that where different units of the construction company are independent of each other, workmen of one unit cannot claim absorption in another unit on completion of the work in the unit in which they were engaged. Relying upon the decisions of the Apex Court in **Workmen of Indian Leaves Tobacco Co. v. Indian Leaves Tobacco Co.,** reported in 1970-I L.L.J. 343, **Isha Steel Treatment v. Association of Engineering Workers,** reported in 1987-I L.L.J. 427 and **Hindustan Steel Works Construction Ltd. and others** (supra), it was held that the law is well-settled that different units of a construction company are independent units for the purpose of Section 25-FFF and a single management or control is not of any importance and that

the workmen of one unit cannot claim absorption in another unit on the completion of the work in which they had been employed.

17. In **Lal Mohammad v. Indian Railway Construction Co. Ltd. and others,** reported in 2004 (102) F.L.R. 124, the notices issued terminating the services of the employees employed in project work were sought to be challenged. The Full Bench of the Allahabad High Court observing that it cannot be lost sight that even if a person has served for long years, that fact by itself cannot furnish valid reasons for regularisation of his services without anything more as in that event it would not meet the requirement of the action being in public interest, it was held that grant of regularisation in effect had resulted in relaxation of the conditions regulating the recruitment etc., prescribed under the Rules which could not have been set at naught for a regularisation as if they had never existed. Reliance was placed in that regard in the decision of the Apex Court in **State of Orissa and others v. Sukanti Mohapatra and others,** reported in 1993 (67) FLR 51 (SC). As regards the facts of the case before the Court, considering the fact that there was no dispute that the termination notices issued were in compliance with the requisite conditions envisaged under Section 25-FFF of the Industrial Disputes Act, 1947, and the project had

been factually closed, it was held that the petitioners therein could have no longer claimed any subsisting relationship of master and servant between the company and themselves.

18. In **Escorts, Ltd. v. Presiding Officer and another,** reported in 1997 (3) L.L.N. 65, considering the provision of law comprised in Clause (bb) excludes from the ambit of the expression "retrenchment" as defined in the main part of Section 2(oo) "termination of the services of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein" it was held that the termination of services of daily-wage workman in accordance with terms of appointment is not retrenchment and termination of services of workman as a result of non-renewal of contract of employment between the employer and workman concerned, on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, would not constitute retrenchment in view of the Clause (bb) in Section 2(oo) of the Industrial Disputes Act, 1947.

19. In **Mahatma Phule Agricultural University and others v. Nasik Zilla Sheth Kamgar Union and others,** reported

in 2001 (II) LLJ 809, it was held by the Apex Court that:-

> "It is seen that the High Court followed the decision of this Court and stated that the status of permanency could not be granted but in spite of the same indirectly does what it could not do directly. The High Court without granting the status of permanency, granted wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971."

20. In **State of Orissa and others v. Balaram Sahu and others,** reported in (2003) 1 SCC 250, it was held by the Apex Court that the right to equal pay for equal work would depend upon not only on the nature or the volume of work, but also in the qualitative difference in reliability and responsibilities as well and though the functions may be same, but the responsibilities do make

a real and substantial difference, and therefore to claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination.

21. Considering the facts and circumstances of the case and the law laid down on the point as discussed above, no fault can be found with any of the findings arrived at by the Court below so as to warrant interference in writ jurisdiction. There being no case made out by the petitioner to warrant interference in the impugned judgment and order, the question formulated for consideration in the matter is to be answered in the negative. The petition, therefore, fails and is hereby dismissed and the rule is discharged with no order as to costs.